
ENGROSSED SUBSTITUTE SENATE BILL 5724

AS AMENDED BY THE HOUSE

Passed Legislature - 1993 First Special Session

State of Washington 53rd Legislature 1993 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senator Rinehart; by request of Department of Social and Health Services)

Read first time 04/14/93.

1 AN ACT Relating to nursing home auditing and reimbursement;
2 amending RCW 74.46.020, 74.46.230, 74.46.280, 74.46.380, 74.46.410,
3 74.46.420, 74.46.430, 74.46.450, 74.46.460, 74.46.470, 74.46.481,
4 74.46.490, 74.46.500, 74.46.510, and 74.46.530; reenacting and amending
5 RCW 74.46.180; adding a new section to chapter 74.46 RCW; creating new
6 sections; repealing RCW 74.46.260 and 74.46.495; providing an effective
7 date; and declaring an emergency.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

9 **Sec. 1.** RCW 74.46.020 and 1991 sp.s. c 8 s 11 are each amended to
10 read as follows:

11 Unless the context clearly requires otherwise, the definitions in
12 this section apply throughout this chapter.

13 (1) "Accrual method of accounting" means a method of accounting in
14 which revenues are reported in the period when they are earned,
15 regardless of when they are collected, and expenses are reported in the
16 period in which they are incurred, regardless of when they are paid.

17 (2) "Ancillary care" means those services required by the
18 individual, comprehensive plan of care provided by qualified
19 therapists.

1 (3) "Appraisal" means the process of estimating the fair market
2 value or reconstructing the historical cost of an asset acquired in a
3 past period as performed by a professionally designated real estate
4 appraiser with no pecuniary interest in the property to be appraised.
5 It includes a systematic, analytic determination and the recording and
6 analyzing of property facts, rights, investments, and values based on
7 a personal inspection and inventory of the property.

8 (4) "Arm's-length transaction" means a transaction resulting from
9 good-faith bargaining between a buyer and seller who are not related
10 organizations and have adverse positions in the market place. Sales or
11 exchanges of nursing home facilities among two or more parties in which
12 all parties subsequently continue to own one or more of the facilities
13 involved in the transactions shall not be considered as arm's-length
14 transactions for purposes of this chapter. Sale of a nursing home
15 facility which is subsequently leased back to the seller within five
16 years of the date of sale shall not be considered as an arm's-length
17 transaction for purposes of this chapter.

18 (5) "Assets" means economic resources of the contractor, recognized
19 and measured in conformity with generally accepted accounting
20 principles.

21 (6) "Bad debts" means amounts considered to be uncollectable from
22 accounts and notes receivable.

23 (7) "Beds" means the number of set-up beds in the facility, not to
24 exceed the number of licensed beds.

25 (8) "Beneficial owner" means:

26 (a) Any person who, directly or indirectly, through any contract,
27 arrangement, understanding, relationship, or otherwise has or shares:

28 (i) Voting power which includes the power to vote, or to direct the
29 voting of such ownership interest; and/or

30 (ii) Investment power which includes the power to dispose, or to
31 direct the disposition of such ownership interest;

32 (b) Any person who, directly or indirectly, creates or uses a
33 trust, proxy, power of attorney, pooling arrangement, or any other
34 contract, arrangement, or device with the purpose or effect of
35 divesting himself of beneficial ownership of an ownership interest or
36 preventing the vesting of such beneficial ownership as part of a plan
37 or scheme to evade the reporting requirements of this chapter;

38 (c) Any person who, subject to subparagraph (b) of this subsection,
39 has the right to acquire beneficial ownership of such ownership

1 interest within sixty days, including but not limited to any right to
2 acquire:

3 (i) Through the exercise of any option, warrant, or right;

4 (ii) Through the conversion of an ownership interest;

5 (iii) Pursuant to the power to revoke a trust, discretionary
6 account, or similar arrangement; or

7 (iv) Pursuant to the automatic termination of a trust,
8 discretionary account, or similar arrangement;

9 except that, any person who acquires an ownership interest or power
10 specified in subparagraphs (i), (ii), or (iii) of this subparagraph (c)
11 with the purpose or effect of changing or influencing the control of
12 the contractor, or in connection with or as a participant in any
13 transaction having such purpose or effect, immediately upon such
14 acquisition shall be deemed to be the beneficial owner of the ownership
15 interest which may be acquired through the exercise or conversion of
16 such ownership interest or power;

17 (d) Any person who in the ordinary course of business is a pledgee
18 of ownership interest under a written pledge agreement shall not be
19 deemed to be the beneficial owner of such pledged ownership interest
20 until the pledgee has taken all formal steps necessary which are
21 required to declare a default and determines that the power to vote or
22 to direct the vote or to dispose or to direct the disposition of such
23 pledged ownership interest will be exercised; except that:

24 (i) The pledgee agreement is bona fide and was not entered into
25 with the purpose nor with the effect of changing or influencing the
26 control of the contractor, nor in connection with any transaction
27 having such purpose or effect, including persons meeting the conditions
28 set forth in subparagraph (b) of this subsection; and

29 (ii) The pledgee agreement, prior to default, does not grant to the
30 pledgee:

31 (A) The power to vote or to direct the vote of the pledged
32 ownership interest; or

33 (B) The power to dispose or direct the disposition of the pledged
34 ownership interest, other than the grant of such power(s) pursuant to
35 a pledge agreement under which credit is extended and in which the
36 pledgee is a broker or dealer.

37 (9) "Capitalization" means the recording of an expenditure as an
38 asset.

1 (10) "Contractor" means an entity which contracts with the
2 department to provide services to medical care recipients in a facility
3 and which entity is responsible for operational decisions.

4 (11) "Department" means the department of social and health
5 services (DSHS) and its employees.

6 (12) "Depreciation" means the systematic distribution of the cost
7 or other basis of tangible assets, less salvage, over the estimated
8 useful life of the assets.

9 (13) "Direct care supplies" means medical, pharmaceutical, and
10 other supplies required for the direct nursing and ancillary care of
11 medical care recipients.

12 (14) "Entity" means an individual, partnership, corporation, or any
13 other association of individuals capable of entering enforceable
14 contracts.

15 (15) "Equity" means the net book value of all tangible and
16 intangible assets less the recorded value of all liabilities, as
17 recognized and measured in conformity with generally accepted
18 accounting principles.

19 (16) "Facility" means a nursing home licensed in accordance with
20 chapter 18.51 RCW, excepting nursing homes certified as institutions
21 for mental diseases, or that portion of a hospital licensed in
22 accordance with chapter 70.41 RCW which operates as a nursing home.

23 (17) "Fair market value" means the replacement cost of an asset
24 less observed physical depreciation on the date for which the market
25 value is being determined.

26 (18) "Financial statements" means statements prepared and presented
27 in conformity with generally accepted accounting principles including,
28 but not limited to, balance sheet, statement of operations, statement
29 of changes in financial position, and related notes.

30 ~~(19) ("Gain on sale" means the difference between the total net
31 book value of nursing home assets, including but not limited to land,
32 building and equipment, and the total sales price of all such assets.~~

33 ~~(20))~~ "Generally accepted accounting principles" means accounting
34 principles approved by the financial accounting standards board (FASB).

35 ~~((21))~~ (20) "Generally accepted auditing standards" means
36 auditing standards approved by the American institute of certified
37 public accountants (AICPA).

1 (~~(22)~~) (21) "Goodwill" means the excess of the price paid for a
2 business over the fair market value of all other identifiable,
3 tangible, and intangible assets acquired.

4 (~~(23)~~) (22) "Historical cost" means the actual cost incurred in
5 acquiring and preparing an asset for use, including feasibility
6 studies, architect's fees, and engineering studies.

7 (~~(24)~~) (23) "Imprest fund" means a fund which is regularly
8 replenished in exactly the amount expended from it.

9 (~~(25)~~) (24) "Joint facility costs" means any costs which
10 represent resources which benefit more than one facility, or one
11 facility and any other entity.

12 (~~(26)~~) (25) "Lease agreement" means a contract between two
13 parties for the possession and use of real or personal property or
14 assets for a specified period of time in exchange for specified
15 periodic payments. Elimination (due to any cause other than death or
16 divorce) or addition of any party to the contract, expiration, or
17 modification of any lease term in effect on January 1, 1980, or
18 termination of the lease by either party by any means shall constitute
19 a termination of the lease agreement. An extension or renewal of a
20 lease agreement, whether or not pursuant to a renewal provision in the
21 lease agreement, shall be considered a new lease agreement. A strictly
22 formal change in the lease agreement which modifies the method,
23 frequency, or manner in which the lease payments are made, but does not
24 increase the total lease payment obligation of the lessee, shall not be
25 considered modification of a lease term.

26 (~~(27)~~) (26) "Medical care program" means medical assistance
27 provided under RCW 74.09.500 or authorized state medical care services.

28 (~~(28)~~) (27) "Medical care recipient" or "recipient" means an
29 individual determined eligible by the department for the services
30 provided in chapter 74.09 RCW.

31 (~~(29)~~) (28) "Net book value" means the historical cost of an
32 asset less accumulated depreciation.

33 (~~(30)~~) (29) "Net invested funds" means the net book value of
34 tangible fixed assets employed by a contractor to provide services
35 under the medical care program, including land, buildings, and
36 equipment as recognized and measured in conformity with generally
37 accepted accounting principles, plus an allowance for working capital
38 which shall be five percent of the (~~allowable costs~~) product of the
39 per patient day rate multiplied by the prior calendar year reported

1 total patient days of each contractor (~~for the previous calendar~~
2 ~~year~~)).

3 (~~(+31)~~) (30) "Operating lease" means a lease under which rental or
4 lease expenses are included in current expenses in accordance with
5 generally accepted accounting principles.

6 (~~(+32)~~) (31) "Owner" means a sole proprietor, general or limited
7 partners, and beneficial interest holders of five percent or more of a
8 corporation's outstanding stock.

9 (~~(+33)~~) (32) "Ownership interest" means all interests beneficially
10 owned by a person, calculated in the aggregate, regardless of the form
11 which such beneficial ownership takes.

12 (~~(+34)~~) (33) "Patient day" or "client day" means a calendar day of
13 care which will include the day of admission and exclude the day of
14 discharge; except that, when admission and discharge occur on the same
15 day, one day of care shall be deemed to exist.

16 (~~(+35)~~) (34) "Professionally designated real estate appraiser"
17 means an individual who is regularly engaged in the business of
18 providing real estate valuation services for a fee, and who is deemed
19 qualified by a nationally recognized real estate appraisal educational
20 organization on the basis of extensive practical appraisal experience,
21 including the writing of real estate valuation reports as well as the
22 passing of written examinations on valuation practice and theory, and
23 who by virtue of membership in such organization is required to
24 subscribe and adhere to certain standards of professional practice as
25 such organization prescribes.

26 (~~(+36)~~) (35) "Qualified therapist" means:

27 (a) An activities specialist who has specialized education,
28 training, or experience as specified by the department;

29 (b) An audiologist who is eligible for a certificate of clinical
30 competence in audiology or who has the equivalent education and
31 clinical experience;

32 (c) A mental health professional as defined by chapter 71.05 RCW;

33 (d) A mental retardation professional who is either a qualified
34 therapist or a therapist approved by the department who has had
35 specialized training or one year's experience in treating or working
36 with the mentally retarded or developmentally disabled;

37 (e) A social worker who is a graduate of a school of social work;

1 (f) A speech pathologist who is eligible for a certificate of
2 clinical competence in speech pathology or who has the equivalent
3 education and clinical experience;

4 (g) A physical therapist as defined by chapter 18.74 RCW; ~~((and))~~

5 (h) An occupational therapist who is a graduate of a program in
6 occupational therapy, or who has the equivalent of such education or
7 training; and

8 (i) A respiratory care practitioner certified under chapter 18.89
9 RCW.

10 ~~((+37+))~~ (36) "Questioned costs" means those costs which have been
11 determined in accordance with generally accepted accounting principles
12 but which may constitute disallowed costs or departures from the
13 provisions of this chapter or rules and regulations adopted by the
14 department.

15 ~~((+38+))~~ (37) "Records" means those data supporting all financial
16 statements and cost reports including, but not limited to, all general
17 and subsidiary ledgers, books of original entry, and transaction
18 documentation, however such data are maintained.

19 ~~((+39+))~~ (38) "Related organization" means an entity which is under
20 common ownership and/or control with, or has control of, or is
21 controlled by, the contractor.

22 (a) "Common ownership" exists when an entity is the beneficial
23 owner of five percent or more ownership interest in the contractor and
24 any other entity.

25 (b) "Control" exists where an entity has the power, directly or
26 indirectly, significantly to influence or direct the actions or
27 policies of an organization or institution, whether or not it is
28 legally enforceable and however it is exercisable or exercised.

29 ~~((+40+))~~ (39) "Restricted fund" means those funds the principal
30 and/or income of which is limited by agreement with or direction of the
31 donor to a specific purpose.

32 ~~((+41+))~~ (40) "Secretary" means the secretary of the department of
33 social and health services.

34 ~~((+42+))~~ (41) "Title XIX" or "Medicaid" means the 1965 amendments
35 to the social security act, P.L. 89-07, as amended.

36 ~~((+43+))~~ (42) "Physical plant capital improvement" means a
37 capitalized improvement that is limited to an improvement to the
38 building or the related physical plant.

1 **Sec. 2.** RCW 74.46.180 and 1987 c 476 s 1 and 1987 c 283 s 9 are
2 each reenacted and amended to read as follows:

3 (1) The state shall make payment of any underpayments within thirty
4 days after the date the preliminary or final settlement report is
5 submitted to the contractor.

6 (2) A contractor found to have received either overpayments or
7 erroneous payments under a preliminary or final settlement shall refund
8 such payments to the state within thirty days after the date the
9 preliminary or final settlement report is submitted to the contractor,
10 subject to the provisions of subsections (3), (4), and (7) of this
11 section.

12 (3) Within the cost centers of nursing services and food, all
13 savings resulting from the respective allowable costs being lower than
14 the respective reimbursement rate paid to the contractor during the
15 report period shall be refunded to the department. However, in
16 computing a preliminary or final settlement, savings in a cost center
17 may be shifted to cover a deficit in another cost center up to the
18 amount of any savings~~((:—PROVIDED, That)).~~ Not more than twenty
19 percent of the rate in a cost center may be shifted into that cost
20 center and no shifting may be made into the property cost center~~((:—~~
21 ~~PROVIDED FURTHER, That)).~~ There shall be no shifting out of nursing
22 services, and savings in food shall be shifted only to cover deficits
23 in the nursing services cost center. There shall be no shifting from
24 the operational to the administrative cost center.

25 (4) Within the administrative and property cost centers ~~((of~~
26 ~~administration and operations and property))~~, the contractor shall
27 retain at least fifty percent, but not more than seventy-five percent,
28 of any savings resulting from the respective audited allowable costs
29 being lower than the respective reimbursement rates paid to the
30 contractor during the report period multiplied by the number of
31 authorized medical care client days in which said rates were in effect,
32 except that no savings may be retained if reported costs in the
33 administrative and property cost centers ~~((and the administration and~~
34 ~~operations cost center))~~ exceed audited allowable costs in these cost
35 areas by a total of ten cents or more per patient day. The secretary,
36 by rule ~~((and regulation))~~, shall establish the basis for the specific
37 percentages of savings to the contractors. Such rules ~~((and~~
38 ~~regulations))~~ may provide for differences in the percentages allowed

1 for each cost center to individual facilities based on performance
2 measures related to administrative efficiency.

3 (5) All ((allowances)) return on investment rate payments provided
4 by RCW 74.46.530 shall be retained by the contractor to the extent net
5 invested funds are substantiated by department field audit. Any
6 industrial insurance dividend or premium discount under RCW 51.16.035
7 shall be retained by the contractor to the extent that such dividend or
8 premium discount is attributable to the contractor's private patients.

9 (6) In the event the contractor fails to make repayment in the time
10 provided in subsection (2) of this section, the department shall
11 either:

12 (a) Deduct the amount of refund due, plus any interest accrued
13 under RCW 43.20B.695, from payment amounts due the contractor; or

14 (b) In the instance the contract has been terminated, (i) deduct
15 the amount of refund due, plus interest assessed at the rate and in the
16 manner provided in RCW 43.20B.695, from any payments due; or (ii)
17 recover the amount due, plus any interest assessed under RCW
18 43.20B.695, from security posted with the department or by any other
19 lawful means.

20 (7) Where the facility is pursuing timely-filed judicial or
21 administrative remedies in good faith regarding settlement issues, the
22 contractor need not refund nor shall the department withhold from the
23 facility current payment amounts the department claims to be due from
24 the facility but which are specifically disputed by the contractor. If
25 the judicial or administrative remedy sought by the facility is not
26 granted after all appeals are exhausted or mutually terminated, the
27 facility shall make payment of such amounts due plus interest accrued
28 from the date of filing of the appeal, as payable on judgments, within
29 sixty days of the date such decision is made.

30 **Sec. 3.** RCW 74.46.230 and 1980 c 177 s 23 are each amended to read
31 as follows:

32 (1) The necessary and ordinary one-time expenses directly incident
33 to the preparation of a newly constructed or purchased building by a
34 contractor for operation as a licensed facility shall be allowable
35 costs. These expenses shall be limited to start-up and organizational
36 costs incurred prior to the admission of the first patient.

37 (2) Start-up costs shall include, but not be limited to,
38 administrative and nursing salaries, utility costs, taxes, insurance,

1 repairs and maintenance, and training; except, that they shall exclude
2 expenditures for capital assets. These costs will be allowable in the
3 (~~administration and operations~~) administrative cost center if they
4 are amortized over a period of not less than sixty months beginning
5 with the month in which the first patient is admitted for care.

6 (3) Organizational costs are those necessary, ordinary, and
7 directly incident to the creation of a corporation or other form of
8 business of the contractor including, but not limited to, legal fees
9 incurred in establishing the corporation or other organization and fees
10 paid to states for incorporation; except, that they do not include
11 costs relating to the issuance and sale of shares of capital stock or
12 other securities. Such organizational costs will be allowable in the
13 (~~administration and operations~~) administrative cost center if they
14 are amortized over a period of not less than sixty months beginning
15 with the month in which the first patient is admitted for care.

16 **Sec. 4.** RCW 74.46.280 and 1980 c 177 s 28 are each amended to read
17 as follows:

18 (1) Management fees will be allowed only if:

19 (a) A written management agreement both creates a principal/agent
20 relationship between the contractor and the manager, and sets forth the
21 items, services, and activities to be provided by the manager; and

22 (b) Documentation demonstrates that the services contracted for
23 were actually delivered.

24 (2) To be allowable, fees must be for necessary, nonduplicative
25 services. (~~Allowable fees for general management services, including
26 the portion of a management fee which is not allocated to specific
27 services such as accounting, are limited to~~

28 ~~(a) the maximum allowable compensation under RCW 74.46.260 of the
29 licensed administrator and, if the facility has at least eighty beds,
30 of an assistant administrator, less~~

31 ~~(b) actual compensation received by the licensed administrator and
32 by the assistant administrator and administrator in training, if any.
33 In computing maximum allowable compensation under RCW 74.46.260 for a
34 facility with at least eighty beds, include the maximum compensation of
35 an assistant administrator even if an assistant administrator is not
36 employed.)~~)

1 (3) A management fee paid to or for the benefit of a related
2 organization will be allowable to the extent it does not exceed the
3 lower of((÷

4 (a) ~~The limits set out in subsection (2) of this section; or~~

5 (b) ~~The lower of~~) the actual cost to the related organization of
6 providing necessary services related to patient care under the
7 agreement((÷)) or the cost of comparable services purchased elsewhere.
8 Where costs to the related organization represent joint facility costs,
9 the measurement of such costs shall comply with RCW 74.46.270.

10 (4) A copy of the agreement must be received by the department at
11 least sixty days before it is to become effective. A copy of any
12 amendment to a management agreement must also be received by the
13 department at least thirty days in advance of the date it is to become
14 effective.

15 ~~((5) Central office costs for general management services,~~
16 ~~including the portion of a management expense which is not allocated to~~
17 ~~specific services, such as accounting, shall be subject to the~~
18 ~~management fee limits determined in subsections (2) and (3) of this~~
19 ~~section.))~~

20 **Sec. 5.** RCW 74.46.380 and 1991 sp.s. c 8 s 12 are each amended to
21 read as follows:

22 (1) Where depreciable assets are disposed of through sale, trade-
23 in, scrapping, exchange, theft, wrecking, or fire or other casualty,
24 depreciation shall no longer be taken on the assets. No further
25 depreciation shall be taken on permanently abandoned assets.

26 (2) Where an asset has been retired from active use but is being
27 held for stand-by or emergency service, and the department has
28 determined that it is needed and can be effectively used in the future,
29 depreciation may be taken.

30 ~~((3) If there is a sale of a nursing facility on or after July 1,~~
31 ~~1991, that results in a gain on sale, the actual reimbursement for~~
32 ~~depreciation paid to the selling contractor through the medicaid~~
33 ~~reimbursement program shall be recovered by the department to the~~
34 ~~extent of any gain on sale. The purchaser is obligated to reimburse~~
35 ~~the department, whether or not the purchaser is a medicaid contractor.~~
36 ~~If the department is unable to collect from the purchaser, then the~~
37 ~~seller is responsible for reimbursing the department. The department~~
38 ~~may establish an appropriate repayment schedule to recover~~

1 depreciation.— If the purchaser is a medicaid contractor and the
2 contractor does not comply with the repayment schedule established by
3 the department, the department may deduct the recovery from the
4 contractor's monthly medicaid payments.— The department may adopt
5 rules, as appropriate, to insure that the principles of this section
6 are implemented with respect to leased assets, or with respect to sales
7 of intangibles or specific assets only.))

8 **Sec. 6.** RCW 74.46.410 and 1991 sp.s. c 8 s 15 are each amended to
9 read as follows:

10 (1) Costs will be unallowable if they are not documented,
11 necessary, ordinary, and related to the provision of care services to
12 authorized patients.

13 (2) Unallowable costs include, but are not limited to, the
14 following:

15 (a) Costs of items or services not covered by the medical care
16 program. Costs of such items or services will be unallowable even if
17 they are indirectly reimbursed by the department as the result of an
18 authorized reduction in patient contribution;

19 (b) Costs of services and items provided to recipients which are
20 covered by the department's medical care program but not included in
21 care services established by the department under this chapter;

22 (c) Costs associated with a capital expenditure subject to section
23 1122 approval (part 100, Title 42 C.F.R.) if the department found it
24 was not consistent with applicable standards, criteria, or plans. If
25 the department was not given timely notice of a proposed capital
26 expenditure, all associated costs will be unallowable up to the date
27 they are determined to be reimbursable under applicable federal
28 regulations;

29 (d) Costs associated with a construction or acquisition project
30 requiring certificate of need approval pursuant to chapter 70.38 RCW if
31 such approval was not obtained;

32 (e) Interest costs other than those provided by RCW 74.46.290 on
33 and after the effective date of RCW 74.46.530;

34 (f) Salaries or other compensation of owners, officers, directors,
35 stockholders, and others associated with the contractor or home office,
36 except compensation paid for service related to patient care;

37 (g) Costs in excess of limits or in violation of principles set
38 forth in this chapter;

- 1 (h) Costs resulting from transactions or the application of
2 accounting methods which circumvent the principles of the cost-related
3 reimbursement system set forth in this chapter;
- 4 (i) Costs applicable to services, facilities, and supplies
5 furnished by a related organization in excess of the lower of the cost
6 to the related organization or the price of comparable services,
7 facilities, or supplies purchased elsewhere;
- 8 (j) Bad debts of non-Title XIX recipients. Bad debts of Title XIX
9 recipients are allowable if the debt is related to covered services, it
10 arises from the recipient's required contribution toward the cost of
11 care, the provider can establish that reasonable collection efforts
12 were made, the debt was actually uncollectible when claimed as
13 worthless, and sound business judgment established that there was no
14 likelihood of recovery at any time in the future;
- 15 (k) Charity and courtesy allowances;
- 16 (l) Cash, assessments, or other contributions, excluding dues, to
17 charitable organizations, professional organizations, trade
18 associations, or political parties, and costs incurred to improve
19 community or public relations;
- 20 (m) Vending machine expenses;
- 21 (n) Expenses for barber or beautician services not included in
22 routine care;
- 23 (o) Funeral and burial expenses;
- 24 (p) Costs of gift shop operations and inventory;
- 25 (q) Personal items such as cosmetics, smoking materials, newspapers
26 and magazines, and clothing, except those used in patient activity
27 programs;
- 28 (r) Fund-raising expenses, except those directly related to the
29 patient activity program;
- 30 (s) Penalties and fines;
- 31 (t) Expenses related to telephones, televisions, radios, and
32 similar appliances in patients' private accommodations;
- 33 (u) Federal, state, and other income taxes;
- 34 (v) Costs of special care services except where authorized by the
35 department;
- 36 (w) Expenses of key-man insurance and other insurance or retirement
37 plans not made available to all employees;
- 38 (x) Expenses of profit-sharing plans;

- 1 (y) Expenses related to the purchase and/or use of private or
2 commercial airplanes which are in excess of what a prudent contractor
3 would expend for the ordinary and economic provision of such a
4 transportation need related to patient care;
- 5 (z) Personal expenses and allowances of owners or relatives;
- 6 (aa) All expenses of maintaining professional licenses or
7 membership in professional organizations;
- 8 (bb) Costs related to agreements not to compete;
- 9 (cc) Amortization of goodwill;
- 10 (dd) Expenses related to vehicles which are in excess of what a
11 prudent contractor would expend for the ordinary and economic provision
12 of transportation needs related to patient care;
- 13 (ee) Legal and consultant fees in connection with a fair hearing
14 against the department where a decision is rendered in favor of the
15 department or where otherwise the determination of the department
16 stands;
- 17 (ff) Legal and consultant fees of a contractor or contractors in
18 connection with a lawsuit against the department;
- 19 (gg) Lease acquisition costs and other intangibles not related to
20 patient care;
- 21 (hh) All rental or lease costs other than those provided in RCW
22 74.46.300 on and after the effective date of RCW 74.46.510 and
23 74.46.530;
- 24 (ii) Postsurvey charges incurred by the facility as a result of
25 subsequent inspections under RCW 18.51.050 which occur beyond the first
26 postsurvey visit during the certification survey calendar year;
- 27 ~~(jj) ((Costs and fees otherwise allowable for legal services,
28 whether purchased, allocated by a home office, regional office or
29 management company, or performed by the contractor or employees of the
30 contractor, in excess of the eighty fifth percentile of such costs
31 reported by all contractors for the most recent cost report period:
32 PROVIDED, That this limit shall not apply if a contractor has not
33 exceeded this percentile in any of the preceding three annual cost
34 report periods;~~
- 35 ~~(kk) Costs and fees otherwise allowable for accounting and
36 bookkeeping services, whether purchased, allocated by a home office,
37 regional office or management company, or performed by the contractor
38 or employees of the contractor, in excess of the eighty fifth
39 percentile of such costs reported by all contractors for the most~~

1 ~~recent cost report period: PROVIDED, That this limit shall not apply~~
2 ~~if a contractor has not exceeded this percentile in any of the~~
3 ~~preceding three annual cost report periods;~~

4 ~~((ll))~~) Compensation paid for any purchased nursing care services,
5 including registered nurse, licensed practical nurse, and nurse
6 assistant services, obtained through service contract arrangement in
7 excess of the amount of compensation paid for such hours of nursing
8 care service had they been paid at the average hourly wage, including
9 related taxes and benefits, for in-house nursing care staff of like
10 classification at the same nursing facility, as reported in the most
11 recent cost report period;

12 ~~((mm))~~) (kk) For all partial or whole rate periods after July 17,
13 1984, costs of land and depreciable assets that cannot be reimbursed
14 under the Deficit Reduction Act of 1984 and implementing state
15 statutory and regulatory provisions.

16 **Sec. 7.** RCW 74.46.420 and 1985 c 361 s 18 are each amended to read
17 as follows:

18 The following principles are inherent in RCW 74.46.430 through
19 74.46.590:

20 (1) Reimbursement rates will be set prospectively on a per patient
21 day basis on a two-year cycle corresponding to each state biennium; and

22 (2) The rates ~~((so established will))~~, in the nursing services,
23 food, administrative, and operational cost centers, shall be adjusted
24 downward or upward when set effective July 1 of the first fiscal year
25 of the two-year rate-setting cycle and adjusted again downward or
26 upward effective July 1 of the second fiscal year of the rate-setting
27 cycle for economic ((conditions and)) trends ((in accordance with
28 appropriations made by the legislature as consistent with federal
29 requirements for the period to be covered by such rates)) and
30 conditions.

31 (3) The July 1 rates for the first year of each biennium shall be
32 adjusted by the change in the implicit price deflator for personal
33 consumption expenditures index published by the bureau of labor
34 statistics of the United States department of labor. The period used
35 to measure the increase or decrease to be applied to these first year
36 biennial rates shall be the calendar year preceding the July 1
37 commencement of the state biennium.

1 (4) The July 1 rates for the second year of each biennium shall be
2 adjusted by the change in the nursing home input price index without
3 capital costs published by the health care financing administration of
4 the department of health and human services, HCFA index, however, any
5 increase shall be multiplied by one and one-half. The period used to
6 measure the HCFA index increase to be multiplied by one and one-half
7 and applied or decrease to be applied to these second-year biennial
8 rates shall also be the calendar year preceding the July 1 commencement
9 of the state biennium: PROVIDED, However, That in the event the change
10 in the HCFA index measured over the following calendar year, the one
11 terminating six months after the start of the state biennium, is
12 twenty-five percent greater or less than the change in the HCFA index
13 measured over the calendar year preceding commencement of the state
14 biennium, the department shall use the HCFA index increase multiplied
15 by one and one-half or decrease in such following calendar year to
16 inflate or decrease nursing facilities' nursing services, food,
17 administrative, and operational rates for July 1 of the second biennial
18 year.

19 (5) If either the implicit price deflator index or the health care
20 financing administration index ceases to be published in the future,
21 the department shall select by rule and use in their place one or more
22 measures of change from an alternate source or sources for the same or
23 comparable time periods.

24 **Sec. 8.** RCW 74.46.430 and 1987 2nd ex.s. c 1 s 2 are each amended
25 to read as follows:

26 (1) The department, as provided by this chapter, will determine
27 prospective cost-related reimbursement rates for services provided to
28 medical care recipients. Each rate so determined shall represent the
29 contractor's maximum compensation within each cost center for each
30 patient day for such medical care recipient.

31 (2) As required, the department may modify such maximum per patient
32 day rates pursuant to the administrative review provisions of RCW
33 74.46.780.

34 (3) ~~((Until the effective date of RCW 74.46.510 and 74.46.530, the~~
35 ~~maximum prospective reimbursement rates for the administration and~~
36 ~~operations and the property cost centers shall be established based~~
37 ~~upon a minimum facility occupancy level of eighty five percent.~~

1 ~~(4) On and after the effective date of RCW 74.46.510 and~~
2 ~~74.46.530,~~) The maximum prospective reimbursement rates for the
3 ~~((administration and operations))~~ administrative, operational, and
4 ~~((the))~~ property cost centers, and the return on investment
5 ~~((allowance))~~ rate shall be established based upon a minimum facility
6 occupancy level of eighty-five percent.

7 ~~((5))~~ (4) All contractors shall be required to adjust and
8 maintain wages for all employees to a minimum hourly wage ~~((established~~
9 ~~by the legislature in the biennial appropriations act, if the~~
10 ~~legislature appropriates moneys to fund prospectively the portion of~~
11 ~~the minimum wage attributable to services to medicaid patients.~~
12 ~~Prospective rate revisions to fund any minimum wage increases shall be~~
13 ~~made only on the dates authorized in the appropriation act. The~~
14 ~~department shall by regulation limit reimbursement to the amount~~
15 ~~appropriated for legislatively authorized enhancement for~~
16 ~~nonadministrative wages and benefits above the moneys necessary to fund~~
17 ~~minimum wages specified in this section. The department in considering~~
18 ~~reimbursement for legislatively authorized wage enhancements will take~~
19 ~~into consideration facility wage history over the past three cost~~
20 ~~report periods))~~ of four dollars and seventy-six cents per hour
21 beginning January 1, 1988, and five dollars and fifteen cents per hour
22 beginning January 1, 1989.

23 **Sec. 9.** RCW 74.46.450 and 1983 1st ex.s. c 67 s 20 are each
24 amended to read as follows:

25 (1) Prospective reimbursement rates for a new contractor will be
26 established within sixty days following receipt by the department of
27 the properly completed projected budget required by RCW 74.46.670.
28 Such reimbursement rates will become effective as of the effective date
29 of the contract and shall remain in effect until ~~((rates can be~~
30 ~~established under RCW 74.46.460 based on a contractor's cost report~~
31 ~~including at least six months of cost data))~~ adjusted or reset as
32 provided in this chapter.

33 (2) Such reimbursement rates will be based on the contractor's
34 projected cost of operations and on costs and payment rates of the
35 prior contractor, if any, or of other contractors in comparable
36 circumstances.

37 (3) If a properly completed budget is not received at least sixty
38 days prior to the effective date of the contract, the department will

1 establish preliminary rates based on the other factors specified in
2 subsection (2) of this section. These preliminary rates will remain in
3 effect until ~~((a determination is made pursuant to RCW 74.46.460))~~
4 adjusted or reset as provided in this chapter.

5 (4) The department is authorized to develop policies and procedures
6 in rule to address the computation of rates for the first and second
7 fiscal years of each biennium, including steps necessary to prorate
8 rate adjustments for economic trends and conditions as authorized in
9 RCW 74.46.420, for contractors having less than twelve months of cost
10 report data for the prior calendar year.

11 **Sec. 10.** RCW 74.46.460 and 1987 c 476 s 3 are each amended to read
12 as follows:

13 (1) Each contractor's reimbursement rates will be determined or
14 adjusted prospectively at least once each calendar year, as provided in
15 this chapter, to be effective July 1st. Provided, that a contractor's
16 rate for the first fiscal year of each biennium must be established
17 upon its own prior calendar period report of at least six months of
18 cost data.

19 (2) Rates may be adjusted as determined by the department to take
20 into account variations in the distribution of patient classifications
21 or changes in patient characteristics from the prior reporting year,
22 program changes required by the department, or changes in staffing
23 levels at a facility required by the department. ~~((Rates shall be~~
24 ~~adjusted by the amount of legislatively authorized enhancements in~~
25 ~~accordance with RCW 74.46.430(5) and 74.46.470(2).)) Rates may also be
26 adjusted to cover costs associated with placing a nursing home in
27 receivership which costs are not covered by the rate of the former
28 contractor, including: Compensation of the receiver, reasonable
29 expenses of receivership and transition of control, and costs incurred
30 by the receiver in carrying out court instructions or rectifying
31 deficiencies found. Rates shall be adjusted for any capitalized
32 additions or replacements made as a condition for licensure or
33 certification. Rates shall be adjusted for capitalized improvements
34 done under RCW 74.46.465.~~

35 ~~((3) Where the contractor participated in the provisions of~~
36 ~~prospective cost-related reimbursement in effect prior to July 1, 1983,~~
37 ~~such contractor's prospective rate effective July 1, 1983, will be~~

1 determined utilizing the contractor's desk reviewed allowable costs for
2 calendar year 1982.

3 (4) ~~All prospective reimbursement rates for 1984 and thereafter~~
4 ~~shall be determined utilizing the prior year's desk reviewed cost~~
5 ~~reports.))~~

6 **Sec. 11.** RCW 74.46.470 and 1987 c 476 s 4 are each amended to read
7 as follows:

8 (1) A contractor's reimbursement rates for medical care recipients
9 will be determined utilizing net invested funds and desk-reviewed cost
10 report data within the following cost centers:

11 (a) Nursing services;

12 (b) Food;

13 (c) ~~((Administration and operations))~~ Administrative; ~~((and))~~

14 (d) Operational; and

15 (e) Property.

16 (2) There shall be for the time period January 1988 through June
17 1990 only an enhancement cost center established to reimburse
18 contractors for specific legislatively authorized enhancements for
19 nonadministrative wages and benefits to ensure that such enhancements
20 are used exclusively for the legislatively authorized purposes. For
21 purposes of settlement, funds appropriated to this cost center shall
22 only be used for expenditures for which the legislative authorization
23 is granted. Such funds may be used only in the following
24 circumstances:

25 (a) The contractor has increased expenditures for which legislative
26 authorization is granted to at least the highest level paid in any of
27 the last three cost years, plus, beginning July 1, 1987, any percentage
28 inflation adjustment as was granted each year under RCW 74.46.495; and

29 (b) All funds shifted from the enhancement cost center are shown to
30 have been expended for legislatively authorized enhancements.

31 (3) If the contractor does not spend the amount appropriated to
32 this cost center in the legislatively authorized manner, then the
33 amounts not appropriately spent shall be recouped at preliminary or
34 final settlement pursuant to RCW 74.46.160.

35 (4) For purposes of this section, "nonadministrative wages and
36 benefits" means wages and payroll taxes paid with respect to, and the
37 employer share of the cost of benefits provided to, employees in job
38 classes specified in an appropriation, which may not include

1 administrators, assistant administrators, or administrators in
2 training.

3 (5) Amounts expended in the enhancement cost center in excess of
4 the minimum wage established under RCW 74.46.430 are subject to all
5 provisions contained in this chapter.

6 **Sec. 12.** RCW 74.46.481 and 1991 sp.s. c 8 s 16 are each amended to
7 read as follows:

8 (1) The nursing services cost center shall include for reporting
9 and audit purposes all costs related to the direct provision of nursing
10 and related care, including fringe benefits and payroll taxes for the
11 nursing and related care personnel, and the cost of nursing supplies.
12 (~~For rates effective for state fiscal year 1984,~~) The department
13 shall adopt by administrative rule a definition of "related care"
14 (~~which shall incorporate, but not exceed services reimbursable as of~~
15 ~~June 30, 1983. For rates effective for state fiscal year 1985, the~~
16 ~~definition of related care shall include ancillary care~~). For rates
17 effective after June 30, 1991, nursing services costs, as reimbursed
18 within this chapter (~~and as tested for reasonableness within this~~
19 ~~section~~), shall not include costs of any purchased nursing care
20 services, including registered nurse, licensed practical nurse, and
21 nurse assistant services, obtained through service contract arrangement
22 in excess of the amount of compensation paid for such hours of nursing
23 care service had they been paid at the average hourly wage, including
24 related taxes and benefits, for in-house nursing care staff of like
25 classification at the same nursing facility, as reported in the most
26 recent cost report period.

27 (2) The department shall adopt (~~by~~) through administrative rules
28 a method for establishing a nursing services cost center rate
29 consistent with the principles stated in this section.

30 (3) Utilizing regression or other statistical technique, the
31 department shall determine a reasonable limit on facility nursing staff
32 taking into account facility patient characteristics. For purposes of
33 this section, facility nursing staff refers to registered nurses,
34 licensed practical nurses and nursing assistants employed by the
35 facility or obtained through temporary labor contract arrangements.
36 Effective January 1, 1988, the hours associated with the training of
37 nursing assistants and the supervision of that training for nursing
38 assistants shall not be included in the calculation of facility nursing

1 staff. In selecting a measure of patient characteristics, the
2 department shall take into account:

3 (a) The correlation between alternative measures and facility
4 nursing staff; and

5 (b) The cost of collecting information for and computation of a
6 measure.

7 If regression is used, the limit shall be set at predicted nursing
8 staff plus 1.75 regression standard errors. If another statistical
9 method is utilized, the limit shall be set at a level corresponding to
10 1.75 standard errors above predicted staffing computed according to a
11 regression procedure. A regression calculated shall be effective for
12 the entire biennium.

13 (4) No facility shall receive reimbursement for nursing staff
14 levels in excess of the limit(~~(, except that, if a facility was~~
15 ~~reimbursed for a nursing staff level in excess of the limit as of June~~
16 ~~30, 1983, the facility may chose [choose] to continue to receive its~~
17 ~~June, 1983 nursing services rate plus any adjustments in rates, such as~~
18 ~~adjustments for economic trends, made available to all facilities)).~~
19 However, nursing staff levels established under subsection (3) of this
20 section shall not apply to the nursing services cost center
21 reimbursement rate only for the pilot facility especially designed to
22 meet the needs of persons living with AIDS as defined by RCW 70.24.017
23 and specifically authorized for this purpose under the 1989 amendment
24 to the Washington state health plan. (~~The reasonableness limit~~
25 ~~established pursuant to this subsection shall remain in effect for the~~
26 ~~period July 1, 1983 through June 30, 1985. At that time the department~~
27 ~~may revise the measure of patient characteristics or method used to~~
28 ~~establish the limit.))~~

29 (5) (~~The department shall select an index of cost increase~~
30 ~~relevant to the nursing and related services cost area. In the absence~~
31 ~~of a more representative index, the department shall use the medical~~
32 ~~care component index as maintained by the United States bureau of labor~~
33 ~~statistics.)) Every two years when rates are set at the beginning of
34 each new biennium, the department shall divide into two peer groups
35 nursing facilities located in the state of Washington providing
36 services to medicaid residents: (a) Those facilities located within a
37 metropolitan statistical area as defined and determined by the United
38 States office of management and budget or other applicable federal
39 office and (b) those not located in such an area. The facilities in~~

1 each peer group shall then be arrayed from lowest to highest by
2 magnitude of per patient day adjusted nursing services cost from the
3 prior report year, regardless of whether any such adjustments are
4 contested by the nursing facility, and the median or fiftieth
5 percentile cost for each peer group shall be determined. Nursing
6 services rates for facilities within each peer group for the first year
7 of the biennium shall be set at the lower of the facility's adjusted
8 per patient day nursing services cost from the prior report period or
9 the median cost for the facility's peer group plus twenty-five percent.
10 This rate shall be reduced or inflated as authorized by RCW 74.46.420.
11 However, the per patient day peer group median cost plus twenty-five
12 percent limit shall not apply to the nursing services cost center
13 reimbursement rate only for the pilot facility especially designed to
14 meet the needs of persons living with AIDS as defined by RCW 70.24.017
15 and specifically authorized for this purpose under the 1989 amendment
16 to the Washington state health plan.

17 ~~(6) ((If a facility's nursing staff level is below the limit~~
18 ~~specified in subsection (3) of this section, the department shall~~
19 ~~determine the percentage increase for all items included in the nursing~~
20 ~~services cost center between the facility's most recent cost reporting~~
21 ~~period and the next prior cost reporting period.~~

22 ~~(a) If the percentage cost increase for a facility is below the~~
23 ~~increase in the selected index for the same time period, the facility's~~
24 ~~reimbursement rate in the nursing services cost center shall equal the~~
25 ~~facility's cost from the most recent cost reporting period plus any~~
26 ~~allowance for inflation provided by legislative appropriation.~~

27 ~~(b) If the percentage cost increase for a facility exceeds the~~
28 ~~increase in the selected index, the department shall limit the cost~~
29 ~~used for setting the facility's rate in the nursing services cost area~~
30 ~~to a level reflecting the increase in the selected index.~~

31 ~~(7) If the facility's nursing staff level exceeds the~~
32 ~~reasonableness limit established in subsection (3) of this section, the~~
33 ~~department shall determine the increase for all items included in the~~
34 ~~nursing services cost center between the facility's most recent cost~~
35 ~~reporting period and the next prior cost reporting period.~~

36 ~~(a) If the percentage cost increase for a facility is below the~~
37 ~~increase in the index selected pursuant to subsection (5) of this~~
38 ~~section, the facility's reimbursement rate in the nursing cost center~~
39 ~~shall equal the facility's cost from the most recent cost reporting~~

1 period adjusted downward to reflect the limit on nursing staff, plus
2 any allowance for inflation provided by legislative appropriation
3 subject to the provisions of subsection (4) of this section.

4 (b) If the percentage cost increase for a facility exceeds the
5 increase in the selected index, the department shall limit the cost
6 used for setting the facility's rate in the nursing services cost
7 center to a level reflecting the nursing staff limit and the cost
8 increase limit, subject to the provisions of subsection (4) of this
9 section, plus any allowance for inflation provided by legislative
10 appropriation.

11 (8) Prospective rates for the nursing services cost center, for
12 state fiscal year 1992 only, shall not be subject to the cost growth
13 index lid in subsections (5), (6), and (7) of this section. The lid
14 shall apply for state fiscal year 1991 rate setting and all state
15 fiscal years subsequent to fiscal year 1992.

16 (9)) If a nursing facility is impacted by the limit authorized in
17 subsection (5) of this section, it shall not receive a prospective rate
18 in nursing services for July 1, 1993, less than the same facility's
19 prospective rate in nursing services as of June 30, 1993, adjusted by
20 any increase in the implicit price deflator for personal consumption
21 expenditures, IPD index, as measured over the period authorized by RCW
22 74.46.420(3).

23 (7) A nursing facility's rate in nursing services for the second
24 year of each biennium shall be that facility's rate as of July 1 of the
25 first year of that biennium reduced or inflated as authorized by RCW
26 74.46.420. The alternating procedures prescribed in this section for
27 a facility's two July 1 nursing services rates occurring within each
28 biennium shall be followed in the same order for each succeeding
29 biennium.

30 (8) Median costs for peer groups shall be calculated initially as
31 provided in this chapter on the basis of the most recent adjusted cost
32 information available to the department prior to the calculation of the
33 new rate for July 1 of the first fiscal year of each biennium,
34 regardless of whether the adjustments are contested or subject to
35 pending administrative or judicial review. Median costs for peer
36 groups shall be recalculated as provided in this chapter on the basis
37 of the most recent adjusted cost information available to the
38 department on October 31 of the first fiscal year of each biennium, and
39 shall apply retroactively to the prior July 1 rate, regardless of

1 whether the adjustments are contested or subject to pending
2 administrative or judicial review. Median costs shall not be adjusted
3 to reflect subsequent administrative or judicial rulings, whether final
4 or not.

5 (9) The department is authorized to determine on a systematic basis
6 facilities with unmet patient care service needs. The department may
7 increase the nursing services cost center prospective rate for a
8 facility beyond the level determined in accordance with subsection (6)
9 of this section if the facility's actual and reported nursing staffing
10 is one standard error or more below predicted staffing as determined
11 according to the method selected pursuant to subsection (3) of this
12 section and the facility has unmet patient care service needs:
13 PROVIDED, That prospective rate increases authorized by this subsection
14 shall be funded only from legislative appropriations made for this
15 purpose during the periods authorized by such appropriations or other
16 laws and the increases shall be conditioned on specified improvements
17 in patient care at such facilities.

18 (10) The department shall establish a method for identifying
19 patients with exceptional care requirements and a method for
20 establishing or negotiating on a consistent basis rates for such
21 patients.

22 (11) The department, in consultation with interested parties, shall
23 adopt rules to establish the criteria the department will use in
24 reviewing any requests by a contractor for a prospective rate
25 adjustment to be used to increase the number of nursing staff. These
26 rules shall also specify the time period for submission and review of
27 staffing requests: PROVIDED, That a decision on a staffing request
28 shall not take longer than sixty days from the date the department
29 receives such a complete request. In establishing the criteria, the
30 department may consider, but is not limited to, the following:

31 (a) Increases in ((acuity)) debility levels of contractors'
32 residents determined in accordance with the department's assessment and
33 reporting procedures and requirements utilizing the minimum data set;

34 (b) Staffing patterns for similar facilities in the same peer
35 group;

36 (c) Physical plant of contractor; and

37 (d) Survey, inspection of care, and department consultation
38 results.

1 **Sec. 13.** RCW 74.46.490 and 1983 1st ex.s. c 67 s 25 are each
2 amended to read as follows:

3 (1) The food cost center shall include for reporting purposes all
4 costs for bulk and raw food and beverages purchased for the dietary
5 needs of medical care recipients.

6 (2) ~~((Reimbursement for the food cost center shall be at the
7 January 1, 1983, reimbursement rate, adjusted annually for inflation.))~~
8 Every two years when rates are set at the beginning of each new
9 biennium, the department shall divide into two peer groups nursing
10 facilities located in the state of Washington providing services to
11 medicaid residents: (a) Those facilities located within a metropolitan
12 statistical area as defined and determined by the United States office
13 of management and budget or other applicable federal office and (b)
14 those not located in such an area. The facilities in each peer group
15 shall then be arrayed from lowest to highest by magnitude of per
16 patient day adjusted food cost from the prior report year, regardless
17 of whether any such adjustments are contested by the nursing facility,
18 and the median or fiftieth percentile cost for each peer group shall be
19 determined. Food rates for facilities within each peer group for the
20 first year of the biennium shall be set at the lower of the facility's
21 adjusted per patient day food cost from the prior report period or the
22 median cost for the facility's peer group plus twenty-five percent.
23 This rate shall be reduced or inflated as authorized by RCW 74.46.420.

24 (3) A nursing facility's food rate for the second year of each
25 biennium shall be that facility's rate as of July 1 of the first year
26 of that biennium reduced or inflated as authorized by RCW 74.46.420.
27 The alternating procedures prescribed in this section for a facility's
28 two July 1 food rates occurring within each biennium shall be followed
29 in the same order for each succeeding biennium.

30 (4) Median costs for peer groups shall be calculated initially as
31 provided in this chapter on the basis of the most recent adjusted cost
32 information available to the department prior to the calculation of the
33 new rate for July 1 of the first fiscal year of each biennium,
34 regardless of whether the adjustments are contested or subject to
35 pending administrative or judicial review. Median costs for peer
36 groups shall be recalculated as provided in this chapter on the basis
37 of the most recent adjusted cost information available to the
38 department on October 31 of the first fiscal year of each biennium, and
39 shall apply retroactively to the prior July 1 rate, regardless of

1 whether the adjustments are contested or subject to pending
2 administrative or judicial review. Median costs shall not be adjusted
3 to reflect subsequent administrative or judicial rulings, whether final
4 or not.

5 **Sec. 14.** RCW 74.46.500 and 1992 c 182 s 1 are each amended to read
6 as follows:

7 (1) The ~~((administration and operations))~~ administrative cost
8 center shall include ~~((all items not included in the cost centers of~~
9 ~~nursing services, food, and property.~~

10 ~~(2) Subject to subsection (4) of this section, the administration~~
11 ~~and operations cost center reimbursement rate for each facility shall~~
12 ~~be based on the computation in this subsection and shall not exceed the~~
13 ~~eighty-fifth percentile of (a) the rates of all reporting facilities~~
14 ~~derived from the computation below, or (b) reporting facilities grouped~~
15 ~~in accordance with subsection (3) of this section:~~

16 ~~AR = TAC/TPD, where~~

17 ~~AR = the administration and operations cost center reimbursement~~
18 ~~rate for a facility;~~

19 ~~TAC = the total costs of the administration and operations cost~~
20 ~~center plus the retained savings from such cost center as~~
21 ~~provided in RCW 74.46.180 of a facility; and~~

22 ~~TPD = the total patient days for a facility for the prior year.~~

23 ~~(3) The secretary may group facilities based on factors which could~~
24 ~~reasonably influence cost requirements of this cost center, other than~~
25 ~~ownership or legal organization characteristics.~~

26 ~~(4) In applying the eighty-fifth percentile reimbursement limit~~
27 ~~authorized by subsection (2) of this section to the pilot facility~~
28 ~~specially designed to meet the needs of persons living with AIDS as~~
29 ~~defined by RCW 70.24.017, and specifically authorized for this purpose~~
30 ~~under the 1989 amendment to the Washington state health plan, the~~
31 ~~department shall exempt the cost of nursing supplies reported by the~~
32 ~~pilot facility in excess of the average of nursing supplies cost for~~
33 ~~medicaid nursing facilities state-wide))~~ for cost reporting purposes
34 all administrative, oversight, and management costs whether facility
35 on-site or allocated in accordance with a department-approved joint-
36 cost allocation methodology. Such costs shall be identical to the cost
37 report line item costs categorized under "general and administrative"

1 in the "administration and operations" combined cost center existing
2 prior to January 1, 1993, except for nursing supplies and purchased
3 medical records.

4 (2) Every two years when rates are set at the beginning of each new
5 biennium, the department shall divide into two peer groups nursing
6 facilities located in the state of Washington providing services to
7 medicaid residents: (a) Those facilities located within a metropolitan
8 statistical area as defined and determined by the United States office
9 of management and budget or other applicable federal office and (b)
10 those not located in such an area. The facilities in each peer group
11 shall then be arrayed from lowest to highest by magnitude of per
12 patient day adjusted administrative cost from the prior report year,
13 regardless of whether any such adjustments are contested by the nursing
14 facility, and the median or fiftieth percentile cost for each peer
15 group shall be determined. Administrative rates for facilities within
16 each peer group for the first year of the biennium shall be set at the
17 lower of the facility's adjusted per patient day administrative cost
18 from the prior report period or the median cost for the facility's peer
19 group plus ten percent. This rate shall be reduced or inflated as
20 authorized by RCW 74.46.420.

21 (3) A nursing facility's administrative rate for the second year of
22 each biennium shall be that facility's rate as of July 1 of the first
23 year of that biennium reduced or inflated as authorized by RCW
24 74.46.420. The alternating procedures prescribed in this section for
25 a facility's two July 1 administrative rates occurring within each
26 biennium shall be followed in the same order for each succeeding
27 biennium.

28 (4) Median costs for peer groups shall be calculated initially as
29 provided in this chapter on the basis of the most recent adjusted cost
30 information available to the department prior to the calculation of the
31 new rate for July 1 of the first fiscal year of each biennium,
32 regardless of whether the adjustments are contested or subject to
33 pending administrative or judicial review. Median costs for peer
34 groups shall be recalculated as provided in this chapter on the basis
35 of the most recent adjusted cost information available to the
36 department on October 31 of the first fiscal year of each biennium, and
37 shall apply retroactively to the prior July 1 rate, regardless of
38 whether the adjustments are contested or subject to pending
39 administrative or judicial review. Median costs shall not be adjusted

1 to reflect subsequent administrative or judicial rulings, whether final
2 or not.

3 NEW SECTION. **Sec. 15.** A new section is added to chapter 74.46 RCW
4 to read as follows:

5 (1) The operational cost center shall include for cost reporting
6 purposes all allowable costs of the daily operation of the facility not
7 included in nursing services and related care, food, administrative, or
8 property costs, whether such costs are facility on-site or allocated in
9 accordance with a department-approved joint-cost allocation
10 methodology.

11 (2) Every two years when rates are set at the beginning of each new
12 biennium, the department shall divide into two peer groups nursing
13 facilities located in the state of Washington providing services to
14 medicaid residents: (a) Those facilities located within a metropolitan
15 statistical area as defined and determined by the United States office
16 of management and budget or other applicable federal office and (b)
17 those not located in such an area. The facilities in each peer group
18 shall then be arrayed from lowest to highest by magnitude of per
19 patient day adjusted operational cost from the prior report year,
20 regardless of whether any such adjustments are contested by the nursing
21 facility, and the median or fiftieth percentile cost for each peer
22 group shall be determined. Operational rates for facilities within
23 each peer group for the first year of the biennium shall be set at the
24 lower of the facility's adjusted per patient day operational cost from
25 the prior report period or the median cost for the facility's peer
26 group plus twenty-five percent. This rate shall be reduced or inflated
27 as authorized by RCW 74.46.420.

28 (3) A nursing facility's operational rate for the second year of
29 each biennium shall be that facility's rate as of July 1 of the first
30 year of that biennium reduced or inflated as authorized by RCW
31 74.46.420. The alternating procedures prescribed in this section for
32 a facility's two July 1 operational rates occurring within each
33 biennium shall be followed in the same order for each succeeding
34 biennium.

35 (4) Median costs for peer groups shall be calculated initially as
36 provided in this chapter on the basis of the most recent adjusted cost
37 information available to the department prior to the calculation of the
38 new rate for July 1 of the first fiscal year of each biennium,

1 regardless of whether the adjustments are contested or subject to
2 pending administrative or judicial review. Median costs for peer
3 groups shall be recalculated as provided in this chapter on the basis
4 of the most recent adjusted cost information available to the
5 department on October 31 of the first fiscal year of each biennium, and
6 shall apply retroactively to the prior July 1 rate, regardless of
7 whether the adjustments are contested or subject to pending
8 administrative or judicial review. Median costs shall not be adjusted
9 to reflect subsequent administrative or judicial rulings, whether final
10 or not.

11 **Sec. 16.** RCW 74.46.510 and 1980 c 177 s 51 are each amended to
12 read as follows:

13 (1) The property cost center rate for each facility shall be
14 determined by dividing the sum of the reported allowable prior period
15 actual depreciation (~~costs~~), subject to RCW 74.46.310 through
16 74.46.380, adjusted for any capitalized additions or replacements
17 approved by the department, and the retained savings from such cost
18 center, as provided in RCW 74.46.180, by the total patient days for the
19 facility in the prior period. If a capitalized addition or retirement
20 of an asset will result in a different licensed bed capacity during the
21 ensuing period, the prior period total patient days used in computing
22 the property cost center rate shall be adjusted to anticipated patient
23 day level.

24 (2) A nursing facility's property rate shall be rebased annually,
25 effective July 1, in accordance with this section regardless of whether
26 the rate is for the first or second year of the biennium.

27 (3) When a certificate of need for a new facility is requested, the
28 department, in reaching its decision, shall take into consideration
29 per-bed land and building construction costs for the facility which
30 shall not exceed a maximum to be established by the secretary.

31 **Sec. 17.** RCW 74.46.530 and 1991 sp.s. c 8 s 17 are each amended to
32 read as follows:

33 (1) The department shall establish for (~~individual facilities~~)
34 each medicaid nursing facility a return on investment (~~allowances~~)
35 rate composed of two parts: A financing allowance and a variable
36 return allowance. A facility's return on investment rate shall be
37 rebased annually, effective July 1, in accordance with this section,

1 regardless of whether the rate is for the first or second year of the
2 biennium.

3 (a) The financing allowance shall be determined by multiplying the
4 net invested funds of each facility by .10, and dividing by the
5 contractor's total patient days from the most recent cost report
6 period. If a capitalized addition or retirement of an asset will
7 result in a different licensed bed capacity during the ensuing period,
8 the prior period total patient days used in computing the financing and
9 variable return allowances shall be adjusted to the anticipated patient
10 day level.

11 (b) In computing the portion of net invested funds representing the
12 net book value of tangible fixed assets, the same assets, depreciation
13 bases, lives, and methods referred to in RCW 74.46.330, 74.46.350,
14 74.46.360, 74.46.370, and 74.46.380, including owned and leased assets,
15 shall be utilized, except that the capitalized cost of land upon which
16 the facility is located and such other contiguous land which is
17 reasonable and necessary for use in the regular course of providing
18 patient care shall also be included. Subject to provisions and
19 limitations contained in this chapter, for land purchased by owners or
20 lessors before July 18, 1984, capitalized cost of land shall be the
21 buyer's capitalized cost. For all partial or whole rate periods after
22 July 17, 1984, if the land is purchased after July 17, 1984,
23 capitalized cost shall be that of the owner of record on July 17, 1984,
24 or buyer's capitalized cost, whichever is lower. In the case of leased
25 facilities where the net invested funds are unknown or the contractor
26 is unable to provide necessary information to determine net invested
27 funds, the secretary shall have the authority to determine an amount
28 for net invested funds based on an appraisal conducted according to RCW
29 74.46.360(1).

30 (c) In determining the variable return allowance:

31 (i) Every two years at the start of each new biennium, the
32 department, without utilizing peer groups, will first rank all
33 facilities in numerical order from highest to lowest according to their
34 ((average per diem)) per patient day adjusted allowable costs for ((the
35 sum of the administration and operations and property cost centers))
36 nursing services, food, administrative, and operational costs combined
37 for the previous cost report period.

38 (ii) The department shall then compute the variable return
39 allowance by multiplying the appropriate percentage amounts, which

1 shall not be less than one percent and not greater than four percent,
2 by the (~~total prospective rate for each facility, as determined in RCW~~
3 ~~74.46.450 through 74.46.510~~) sum of the facility's nursing services,
4 food, administrative, and operational rate components. The percentage
5 amounts will be based on groupings of facilities according to the
6 rankings (~~as established~~) prescribed in (i) of this subsection
7 (1)(c). The percentages calculated and assigned will remain the same
8 for the next variable return allowance paid in the second year of the
9 biennium. Those groups of facilities with lower per diem costs shall
10 receive higher percentage amounts than those with higher per diem
11 costs.

12 (d) The sum of the financing allowance and the variable return
13 allowance shall be the return on investment rate for each facility, and
14 shall be added to the prospective rates of each contractor as
15 determined in RCW 74.46.450 through 74.46.510.

16 (e) In the case of a facility which was leased by the contractor as
17 of January 1, 1980, in an arm's-length agreement, which continues to be
18 leased under the same lease agreement, and for which the annualized
19 lease payment, plus any interest and depreciation expenses associated
20 with contractor-owned assets, for the period covered by the prospective
21 rates, divided by the contractor's total patient days, minus the
22 property cost center determined according to RCW 74.46.510, is more
23 than the return on investment (~~allowance~~) rate determined according
24 to subsection (1)(d) of this section, the following shall apply:

25 (i) The financing allowance shall be recomputed substituting the
26 fair market value of the assets as of January 1, 1982, as determined by
27 the department of general administration through an appraisal
28 procedure, less accumulated depreciation on the lessor's assets since
29 January 1, 1982, for the net book value of the assets in determining
30 net invested funds for the facility. A determination by the department
31 of general administration of fair market value shall be final unless
32 the procedure used to make such determination is shown to be arbitrary
33 and capricious.

34 (ii) The sum of the financing allowance computed under subsection
35 (1)(e)(i) of this section and the variable allowance shall be compared
36 to the annualized lease payment, plus any interest and depreciation
37 (~~expenses~~) associated with contractor-owned assets, for the period
38 covered by the prospective rates, divided by the contractor's total
39 patient days, minus the property cost center rate determined according

1 to RCW 74.46.510. The lesser of the two amounts shall be called the
2 alternate return on investment ((allowance)) rate.

3 (iii) The return on investment ((allowance)) rate determined
4 according to subsection (1)(d) of this section or the alternate return
5 on investment ((allowance)) rate, whichever is greater, shall be the
6 return on investment ((allowance)) rate for the facility and shall be
7 added to the prospective rates of the contractor as determined in RCW
8 74.46.450 through 74.46.510.

9 (f) In the case of a facility which was leased by the contractor as
10 of January 1, 1980, in an arm's-length agreement, if the lease is
11 renewed or extended pursuant to a provision of the lease, the treatment
12 provided in subsection (1)(e) of this section shall be applied except
13 that in the case of renewals or extensions made subsequent to April 1,
14 1985, reimbursement for the annualized lease payment shall be no
15 greater than the reimbursement for the annualized lease payment for the
16 last year prior to the renewal or extension of the lease.

17 ~~(2) ((In the event that the department of health and human services
18 disallows the application of the return on investment allowances to
19 nonprofit facilities, the department shall modify the measurements of
20 net invested funds used for computing individual facility return on
21 investment allowances as follows:— Net invested funds for each
22 nonprofit facility shall be multiplied by one minus the ratio of equity
23 funds to the net invested funds of all nonprofit facilities.~~

24 ~~(3))~~ Each biennium, beginning in 1985, the secretary shall review
25 the adequacy of return on investment ((allowances)) rates in relation
26 to anticipated requirements for maintaining, reducing, or expanding
27 nursing care capacity. The secretary shall report the results of such
28 review to the legislature and make recommendations for adjustments in
29 the return on investment rates utilized in this section, if
30 appropriate.

31 NEW SECTION. **Sec. 18.** By November 15, 1994, the legislative
32 budget committee shall complete a study of the nursing home
33 reimbursement system. The study shall include an assessment of the
34 financial stability of the nursing home industry, to the extent
35 sufficient information is available from the industry and other sources
36 to make such an assessment; an evaluation of the adequacy of the
37 nursing home reimbursement system for promoting cost-effective, quality
38 care; and, if appropriate, recommendations for improving the

1 reimbursement system's capacity to promote sufficient availability of
2 efficient and quality care. In conducting the study, the legislative
3 budget committee shall consult with the nursing home industry, consumer
4 groups, health care professionals, and the department of social and
5 health services.

6 NEW SECTION. **Sec. 19.** The following acts or parts of acts are
7 each repealed:

- 8 (1) RCW 74.46.260 and 1980 c 177 s 26; and
9 (2) RCW 74.46.495 and 1983 1st ex.s. c 67 s 26.

10 *NEW SECTION. **Sec. 20.** *The department of social and health*
11 *services shall provide a prospective rate enhancement for nursing homes*
12 *meeting all of the following conditions: (1) The nursing home entered*
13 *into an arms-length agreement for a facility lease prior to January 1,*
14 *1980; (2) the lessee purchased the leased facility after January 1,*
15 *1980; (3) the lessor defaulted on its loan or mortgage for the assets*
16 *of the facility; (4) the facility is located in a county with a 1989*
17 *population of less than 45,000 and an area more than 5,000 square*
18 *miles. The rate enhancement increase shall be effective July 1, 1993.*
19 *To the extent possible, the increase shall recognize the 1982 fair*
20 *market value of the nursing home's assets as determined by an appraisal*
21 *contracted by the department of general administration. If necessary,*
22 *the increase shall be granted from state funds only. In no case shall*
23 *the annual value of the rate increase exceed \$50,000. The rate*
24 *adjustment in this section shall not be implemented if it jeopardizes*
25 *federal matching funds for qualifying facilities or the long-term care*
26 *program in general. Funds may be disbursed on a monthly basis.*
27 **Sec. 20 was vetoed, see message at end of chapter.*

28 NEW SECTION. **Sec. 21.** This act is necessary for the immediate
29 preservation of the public peace, health, or safety, or support of the
30 state government and its existing public institutions, and shall take
31 effect July 1, 1993.

Passed the Senate May 6, 1993.

Passed the House May 6, 1993.

Approved by the Governor May 28, 1993, with the exception of
certain items which were vetoed.

Filed in Office of Secretary of State May 28, 1993.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to section 20,
3 Engrossed Substitute Senate Bill No. 5724, entitled:

4 "AN ACT Relating to nursing home auditing and reimbursement;"

5 Section 20 of Engrossed Substitute Senate Bill No. 5724 directs the
6 Department of Social and Health Services to provide a prospective rate
7 enhancement of \$50,000 per year to all nursing homes meeting four
8 specific criteria.

9 Because this rate enhancement will be included in the reimbursement
10 statute, it will become part of the state plan which must be submitted
11 to the federal government. Since it has never been a part of the
12 nursing home rate-setting mechanism, the enhancement jeopardizes
13 federal matching funds and will ultimately be disallowed.

14 Additionally, I believe Washington's nursing home reimbursement
15 system adequately reimburses facilities for their allowable expenses,
16 and this rate enhancement creates an inequitable situation.

17 With the exception of section 20, Engrossed Substitute Senate Bill
18 No. 5724 is approved."